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OFFICE OF PETITIONS

In re	:
Fukumoto, et al.	:
Application No. 09/744,426	: DECISION REGARDING
Filed: January 22, 2001	: PATENT TERM ADJUSTMENT
Attorney Docket No. 9683/76	:
	:
	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)", filed February 6, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred eighty-four (584) days to eight hundred twenty-nine (829) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **six hundred fifty-two (652) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 2, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is five hundred eighty-four (584) days. On February 2, 2007,

Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is eight hundred twenty-nine (829) days.

Applicants state that the application is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of five hundred eighty-seven (587) days based on an adjustment for PTO delay of eight hundred twenty-one (821) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and one hundred ninety-four (194) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delays of twenty-nine (29) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and seventeen (17), two hundred seventy-two (272), fifty-five (55), and sixty-eight (68) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustments of 272, 55, and 68 days are at issue.

With respect to the two hundred seventy-two (272) days of delay assessed, applicants assert that they should have only been assessed delay of one hundred nine (109). Applicants state that the clock should have stopped when they filed a supplemental IDS on April 11, 2005. However, a review of the file indicates that applicants filed an additional supplemental IDS on September 21, 2005. Moreover, § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "each item of information contained in the information disclosure statement was **first** cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by an individual in 1.56(c) more than thirty days prior to the filing" of the IDS.² The IDS filed on September 21, 2005 did not contain a proper 37 C.F.R. § 1.704(d) statement, because it lacked the language of "first cited". Accordingly, applicant delay with respect to this filing was correctly assessed as 272 days.

Similarly, with respect to the fifty-five (55) days of delay assessed, applicants assert that they should have only been assessed delay of forty-one (41) days, because the clock should have stopped when they filed a supplemental IDS on February 13,

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

² Emphasis added.

2006. However, a review of the file indicates that applicants filed an additional supplemental IDS on February 27, 2006. Moreover, the IDS did not contain the proper "first cited" language as discussed above. Accordingly, applicant delay with respect to this filing was properly assessed as 55 days.


With respect to the sixty-eight (68) days of applicant delay, applicants are correct that zero (0) days should been assessed. A review of the IDS filed October 23, 2006 reveals that it did contain a proper 1.704(d) statement, including the language of "first cited". Accordingly, no delay should have been assessed with respect to this filing.

In view thereof, the correct determination of patent term adjustment at the time of mailing of the Notice of Allowance is **six hundred fifty-two (652) days** (1025 (831+194) days of PTO delay, reduced by 373 (17+272+55+29) days of applicant delay.

Receipt of the fee under 37 C.F.R. § 1.18(e) is acknowledged.

The matter is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Sunday
Date: 4/15/2007

PALM INTRANET

Time: 18:48:45

PTA Calculations for Application: 09/744426

Application Filing Date:	01/22/2001	PTO Delay (PTO):	1025
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	441
Post-Issue Petitions:	0	Total PTA (days):	652
PTO Delay Adjustment:	68		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
87	04/15/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	68		
74	11/02/2006	MAIL NOTICE OF ALLOWANCE			
73	10/31/2006	ISSUE REVISION COMPLETED			
72	10/23/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		68	64
71	10/30/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
70	10/30/2006	NOTICE OF ALLOWABILITY			
69	05/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
68	05/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	05/22/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	05/15/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
65	08/24/2006	DATE FORWARDED TO EXAMINER			
64	08/16/2006	RESPONSE AFTER NON-FINAL ACTION		29	56
63	08/16/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
62	05/22/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
61	05/15/2006	MISCELLANEOUS INCOMING LETTER			
60	05/15/2006	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
59	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

57	05/15/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
56	04/18/2006	MAIL NON-FINAL REJECTION			
55	04/07/2006	NON-FINAL REJECTION			
54	02/27/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	02/27/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	02/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
51	09/21/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
49	02/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		55	44
48	02/13/2006	REFERENCE CAPTURE ON IDS			
47	02/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	02/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	01/10/2006	DATE FORWARDED TO EXAMINER			
44	01/03/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
43	01/03/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
42	11/03/2005	MAIL RESTRICTION REQUIREMENT	194		31
41	10/31/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
40	09/21/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		272	31
39	03/30/2005	REFERENCE CAPTURE ON IDS			
38	03/12/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	01/22/2001	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
36	04/11/2005	REFERENCE CAPTURE ON IDS			
35	04/11/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	03/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	01/03/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	04/06/2005	DATE FORWARDED TO EXAMINER			

31	12/23/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
30	12/23/2004	WORKFLOW INCOMING AMENDMENT IFW			
29	11/18/2004	MAIL RESTRICTION REQUIREMENT			
28	11/15/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
27	10/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
26	08/16/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		17	21
25	06/21/2004	REFERENCE CAPTURE ON IDS			
24	06/21/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	01/21/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	09/13/2004	DATE FORWARDED TO EXAMINER			
21	07/30/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
20	07/30/2004	WORKFLOW INCOMING AMENDMENT IFW			
19	06/30/2004	MAIL RESTRICTION REQUIREMENT	831		3
18	06/28/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
17	12/15/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	08/04/2003	CASE DOCKETED TO EXAMINER IN GAU			
15	02/10/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	01/17/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	06/06/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	06/12/2001	CASE DOCKETED TO EXAMINER IN GAU			
10	01/22/2001	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
9	04/18/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
8	04/12/2001	APPLICATION DISPATCHED FROM OIPE			
7	03/22/2001	RELEASED TO OIPE			
6	03/22/2001	NOTICE OF DO/EO ACCEPTANCE MAILED			
5	02/22/2001	371 APPLICATION PREEXAMINATION DOCKETING			
4	01/30/2001	371 APPLICATION PREEXAMINATION DOCKETING			
3	01/22/2001	RECEIPT OF 371 REQUEST			
2	01/30/2001	CORRESPONDENCE ADDRESS CHANGE			
1	01/22/2001	INITIAL EXAM TEAM NN			